

**MINUTES**  
**BOARD OF ADJUSTMENT**  
**PUBLIC HEARING**  
**OCTOBER 13, 2005**

The Lake County Board of Adjustment met Thursday, October 13, 2005 in the Commission Chambers on the second floor of the Round Administration Building in Tavares, Florida to consider requests for variances and any other petitions that may be submitted in accordance with Chapter XIV of the Lake County Land Development Regulations.

**Board Members Present:**

Howard (Bob) Fox, Jr.  
Darren Eslinger  
Henry Wolsmann, Vice Chairman  
Ruth Gray  
Mary Link Bennett  
Donald Schreiner, Chairman  
Carl Ludecke

**Staff Present:**

Terrie Diesbourg, Director, Customer Services Division  
Anita Greiner, Senior Planner, Customer Services Division  
Anna Ely, Public Hearing Coordinator, Customer Services Division  
Stacy Allen, Senior Planner, Planning and Development Services Division  
Sherie Ross, Public Hearing Coordinator, Planning and Development Services Division  
Melanie Marsh, Deputy County Attorney  
Kevin McBride, Assistant County Attorney

Chairman Schreiner called the meeting to order at 1:00 p.m. He noted for the record that there was a quorum present. He confirmed the Proof of Publication shown on the monitor

**TABLE OF CONTENTS**

<b><u>CASE NO.</u></b>	<b><u>OWNER/ APPLICANT</u></b>	<b><u>AGENDA NO.</u></b>
Consideration of Minutes	September 8, 2005	
Withdrawals		
BOA#104-05-2	KB Home Orlando, LLC/John Domain	5
BOA#106-05-4	Harry L. Glass Trustee	7
BOA#108-05-4	Joe Hartigan	9
Postponements		
BOA#105-05-3	Elizabeth Lee-Wilkinson/Sundee Jay	6
Discussion of Consent Agenda		
Consent Agenda Approval		
BOA#107-05-3	Roger D. and Sandra B. Floyd	8
BOA#109-05-5	Arthur A. Kelly Jr. and Betty A. Kelly	10
BOA#111-05-2	Michael G. Caputo Jr. and Pamela J. Caputo	12
BOA#113-05-3	James D. and Lois Hanger	14
BOA#114-05-5	Carson Browning Jr. and Joyce A. Browning	15
	Leslie Campione, PA	
BOA#115-05-5	Wilmer E. and Edna L. Schultz//Tim Condron	16
Regular Agenda		
BOA#89-05-5	Samuel Rednour/Leslie Campione, PA	1
BOA#93-05-5	Samuel Rednour/Leslie Campione, PA	2
BOA#77-05-2	Lake Grove Utilities, Inc./Karl Sanders, Esquire	3
BOA#102-05-5	Kenneth D. and Kandice A. Dembeck/Nextel Communications	4
BOA#110-05-5	Bert and Barbara Bozeman	11
BOA#112-05-3	Larry D. and Katherine Nicholson	13
BOA#116-05-3	Dog LLC/LeeDawn Carpenter	17
Introduction	Kevin McBride	

**Minutes**

**MOTION by Mary Link Bennett, SECONDED by Darren Eslinger to approve the September 8, 2005 Board of Adjustment Public Hearing minutes, as submitted.**

**FOR:** Fox, Eslinger, Wolsmann, Bennett, Schreiner

**AGAINST:** None

**NOT PRESENT:** Gray, Ludecke

**MOTION CARRIED: 5-0**

Chairman Schreiner stated that if a variance is approved, the owner/applicant should give staff at least 24 hours before proceeding to the zoning counter. He noted that all letters, petitions, photographs, and other materials presented at this meeting by applicants and those in support or opposition must be submitted to staff prior to proceeding to the next case. These exhibits will be on file in the Customer Services Division.

<b>CASE NO.:</b>	<b>BOA#104-05-2</b>	<b>AGENDA NO.:</b>	<b>5</b>
<b>OWNER/APPLICANT:</b>	<b>KB Home Orlando, LLC John Domain</b>		
<b>CASE NO.:</b>	<b>BOA#106-05-4</b>	<b>AGENDA NO.:</b>	<b>7</b>
<b>OWNER/APPLICANT:</b>	<b>Harry L. Glass Trustee</b>		
<b>CASE NO.:</b>	<b>BOA#108-05-4</b>	<b>AGENDA NO.:</b>	<b>9</b>
<b>OWNER/APPLICANT:</b>	<b>Joe Hartigan</b>		

Ruth Gray came into the meeting.

Anita Greiner, Senior Planner, stated that BOA#104-05-2, BOA#106-05-4, and BOA#108-05-4 have been withdrawn.

**MOTION by Mary Link Bennett, SECONDED by Darren Eslinger to accept the withdrawal of BOA#104-05-2, BOA#106-05-4, and BOA#108-05-4.**

There was no one in the audience who wished to make a comment on any of these withdrawals.

**FOR:** Fox, Eslinger, Wolsmann, Gray, Bennett, Schreiner

**AGAINST:** None

**NOT PRESENT:** Ludecke

**MOTION CARRIED: 6-0**

**CASE NO.:**

**BOA#105-05-3**

**AGENDA NO.:**

6

**OWNER/APPLICANT:**

**Elizabeth Lee-Wilkinson**  
**Sundeep Jay**

Carl Ludecke came into the meeting.

Anita Greiner, Senior Planner, stated that the above case has requested a 30-day continuance.

**MOTION by Mary Link Bennett, SECONDED by Darren Eslinger to continue BOA#105-05-3 until the November 10, 2005 Board of Adjustment Public Hearing.**

There was no one in the audience who was opposed to this continuance.

**FOR:**

**Fox, Eslinger, Wolsmann, Gray, Bennett, Schreiner, Ludecke**

## AGAINST:

None

**MOTION CARRIED: 7-0**

**Discussion of Consent Agenda**

Anita Greiner, Senior Planner, asked that Agenda No. 17, BOA#116-05-3, be removed from the consent agenda and added to the regular agenda.

Chairman Schreiner explained the procedure for hearing the cases on the consent agenda.

There was no one the Board nor anyone in the audience who had an objection to the following cases remaining on the consent agenda: BOA#107-05-3, BOA#109-05-5, BOA#111-05-2, BOA#113-05-3, BOA#114-05-5, and BOA#115-05-5.

Henry Wolsmann asked that BOA#112-05-3 be removed from the consent agenda and placed on the regular agenda.

<b>CASE NO.:</b>	<b>BOA#107-05-3</b>	<b>AGENDA NO.:</b>	<b>8</b>
<b>OWNERS/APPLICANTS:</b>	<b>Roger D. and Sandra B. Floyd</b>		
<b>CASE NO.:</b>	<b>BOA#109-05-5</b>	<b>AGENDA NO.:</b>	<b>10</b>
<b>OWNERS/APPLICANTS:</b>	<b>Arthur A. Kelly Jr. and Betty A. Kelly</b>		
<b>CASE NO.:</b>	<b>BOA#111-05-2</b>	<b>AGENDA NO.:</b>	<b>12</b>
<b>OWNERS/APPLICANTS:</b>	<b>Michael G. Caputo Jr. and Pamela J. Caputo</b>		
<b>CASE NO.:</b>	<b>BOA#113-05-3</b>	<b>AGENDA NO.:</b>	<b>14</b>
<b>OWNERS/APPLICANTS:</b>	<b>James D. and Lois Hanger</b>		
<b>CASE NO.:</b>	<b>BOA#114-05-5</b>	<b>AGENDA NO.:</b>	<b>15</b>
<b>OWNERS:</b>	<b>Carson Browning Jr. and Joyce A. Browning</b>		
<b>APPLICANT:</b>	<b>Leslie Campione, PA</b>		
<b>CASE NO.:</b>	<b>BOA#115-05-5</b>	<b>AGENDA NO.:</b>	<b>16</b>
<b>OWNERS:</b>	<b>Wilmer E. and Edna L. Schultz</b>		
<b>APPLICANT:</b>	<b>Tim Condron</b>		

**MOTION by Ruth Gray, SECONDED by Carl Ludecke to take the following actions on the above consent agenda:**

<b>BOA#107-05-3</b>	<b>Approval</b>
<b>BOA#109-05-5</b>	<b>Approval</b>
<b>BOA#111-05-2</b>	<b>Approval with one condition</b>
<b>BOA#113-05-3</b>	<b>Approval with conditions</b>
<b>BOA#114-05-5</b>	<b>Approval with conditions</b>
<b>BOA#115-05-5</b>	<b>Approval</b>

**FOR:** **Fox, Eslinger, Wolsmann, Gray, Bennett, Schreiner, Ludecke**

**AGAINST:** **None**

**MOTION CARRIED: 7-0**

**CASE NO.:** BOA#89-05-5  
**OWNER:** Samuel Rednour  
**APPLICANT:** Leslie Campione, PA

**AGENDA NO.:** 1

**CASE NO.:** BOA#93-05-5  
**OWNER:** Samuel Rednour  
**APPLICANT:** Leslie Campione, PA

**AGENDA NO.:** 2

Anita Greiner, Senior Planner, stated that these cases were continued at the Board of Adjustment public hearing last month. She said both cases were heard in their entirety at that time. Staff is still recommending denial on both cases. She is not aware of any changes. She showed the aerials from the two cases on the monitor. These properties are in a platted subdivision, Carlton Village. She pointed out that these lots do not meet two of the four minimum criteria listed in the Comprehensive Plan. Staff has assumed that wells would be used as her research did not find central water available.

Leslie Campione was present to represent the cases. She stated that Mr. Rednour obtained these lots through the purchase of tax certificates and ultimately received a tax deed on each of his lots after he paid the back taxes as well as the ongoing taxes. He was conveyed ownership of the property from the Tax Collector and has been contributing to the tax roll ever since. After the last public hearing, she prepared a letter explaining the situation and sent it out to the adjoining property owners. She submitted the letter to the Hal A. Write Estate c/o Phillip Reason as Applicant Exhibit A and the letter to Green Hill Shores, Inc. as Applicant Exhibit B and read those letters into the record. After sending these letters, she received an e-mail from Phillip Reason (Applicant Exhibit C). She read the e-mail into the record. He said they have no interest in this property. Both Mr. and Mrs. Wright have passed away. He said that at the time they stopped paying taxes, they advised the County to sell the property for back taxes. He said they have no idea how to find the children of Mr. and Mrs. Wright. He suggested that if anyone wants to buy the property, they pay the back taxes or work out an agreement with the County. Ms. Campione said she was not able to determine who bought the tax certificate for this adjoining property to Agenda No. 1 when the taxes were not paid. The letter sent on Agenda No. 2 came back.

Ms. Greiner reiterated that these requests are not consistent with the Comprehensive Plan because the properties are not large enough for septic tanks and wells, and they do not front on a publicly maintained road. Meeting the intent of the Comprehensive Plan is not enough. The requests must be consistent.

Melanie Marsh, Deputy County Attorney, stated that when a tax certificate is bought, a person must wait at least two years from the date of purchase before applying for a tax deed. The person can wait as long as seven years to apply for the tax deed.

Referring to the aerial maps, Ms. Campione stated that there are other houses on lots the same size as this property. If the source of water is wells, then that is what those houses have. Those lots also have septic tanks. The residents are using the platted roads that are not maintained by the County. All these lots are functioning as a subdivision. Mr. Rednour is not getting the same rights as the other residents in the subdivision. There is a development pattern for this area. Unless the County staff appeals this Board's decision to the Circuit Court, there will be no appeal of the decision to grant a variance in these two cases. There has been no opposition to these requests, and one letter of support was received. She felt this was truly a deprivation of a property right. If the variances are not granted, Mr. Rednour will stop paying taxes on these lots.

Carl Ludecke said there is a water system in the area that he has connected to it many times. However, he did not know how close it is to this property. The company used to be called Southern States Utilities. When he asked the dimensions of the lots, Donald Schreiner said the first lot is 70 feet wide by 119 feet deep, 8330 square feet; and the second lot is 83 feet wide by 122 feet deep or 10,126 square feet.

Ms. Campione commented that there are many new subdivisions being platted with lots 50 and 60 feet wide and not 110 feet deep.



**CASE NO.:** BOA#89-05-5 **AGENDA NO.:** 1  
**OWNER:** Samuel Rednour  
**APPLICANT:** Leslie Campione, PA

**CASE NO.:** BOA#93-05-5 **AGENDA NO.:** 2  
**OWNER:** Samuel Rednour  
**APPLICANT:** Leslie Campione, PA **PAGE NO.:** 2

When Henry Wolsmann said this Board cannot amend the Comprehensive Plan, Ms. Campione said she did not feel that this would be amending the Comprehensive Plan or that the Comprehensive Plan intended to deprive people of their property rights.

Ms. Greiner said these subject lots cannot be compared to newly created lots that probably have central water and sewer and paved roads.

When Ms. Campione said Mr. Rednour is having his property rights taken away, Darren Eslinger said Mr. Rednour never had the property rights from the beginning; he just did not know that at the time.

Ms. Greiner added that Mr. Rednour had the ability to come to the Zoning Division before he bought the tax certificate to determine if the lots were buildable.

Ms. Campione asked this Board, as a body, to send a letter to Ed Havill's office and ask them to put people on specific notice that when a tax certificate for a platted lot is sold, it does not equal the right to develop and use the property.

Ms. Greiner reiterated that she had checked with the utility company Mr. Ludecke had spoken of, and she was told that they do not have water connection in this area. Although Ms. Campione had said the Comprehensive Plan gives rules for new subdivisions, Ms. Greiner said it also makes sure that the old subdivisions do not compound existing problems of wells being on lots that are too small. That is why the aggregation requirement was put in the Comprehensive Plan. There would be no need for the aggregation requirement for new subdivisions.

Sam Rednour said that no one ever advised him to check to determine if these lots were buildable. Had he known to do this, he would have. These lots were sold to him with the impression that they were buildable lots. He bought these lots in good faith and has paid all the taxes since that time as well as the back taxes. He did not feel that what has happened is fair.

**MOTION by Darren Eslinger, SECONDED by Mary Link Bennett to continue BOA#89-05-5 until the November 10, 2005 Lake County Board of Adjustment public hearing to give the applicant additional time to pursue the tax records to determine if there is the ability to purchase the adjacent property's tax deed and finalize it rather than have the case finalized at this public hearing.**

In response to Ms. Gray, Mr. Eslinger said he made this motion with the idea that the Tax Office may have more information that may help resolve this case. His motion was based on the e-mail received from Mr. Reason.

Mr. Ludecke did not feel a continuance would do any good.

**FOR:** Eslinger, Bennett

**AGAINST:** Fox, Wolsmann, Gray, Schreiner, Ludecke

**MOTION FAILED:** 2-5

**CASE NO.:** BOA#89-05-5  
**OWNER:** Samuel Rednour  
**APPLICANT:** Leslie Campione, PA

**AGENDA NO.:** 1

**CASE NO.:** BOA#93-05-5  
**OWNER:** Samuel Rednour  
**APPLICANT:** Leslie Campione, PA

**AGENDA NO.:** 2

**PAGE NO.:** 3

**MOTION by Henry Wolsmann, SECONDED by Carl Ludecke to deny the variance requests in BOA#89-05-5 and BOA#93-05-5.**

**FOR:** Fox, Wolsmann, Gray, Schreiner, Ludecke

**AGAINST:** Eslinger, Bennett

**MOTION CARRIED: 5-2**

Mr. Rednour thanked the Board for their consideration.

CASE NO.: BOA#77-05-2

AGENDA NO.: 3

OWNER: Lake Grove Utilities, Inc.  
APPLICANT: Karl Sanders, Esquire

Anita Greiner, Senior Planner, said this case was heard previously and continued. At the previous meeting, uniting the property into one parcel was discussed so variances to centering and to the setback between the separate parcels would not be needed. She spoke to the attorney representing the cell tower company, and he said the owner was agreeable to a unity of title. However, the tower would still be within 800 feet of single-family dwelling units. The applicant was instructed at the previous public hearing to try to find other property in the area that would be more suitable for this purpose. She referred to a letter from Mr. Arnold, who was agreeable to Cingular Wireless using his property. She submitted and pointed out on a map (County Exhibit A) the location of Mr. Arnold's property. If the tower is placed in the middle of Mr. Arnold's property, it will meet all the setback requirements and it will meet the distance requirement for single-family dwelling units. Staff is still recommending denial for the cell tower to be placed on the subject property because it is closer than 800 feet to so many dwelling units. There is a subdivision both to the north and south of the subject site. There are approximately 35 single-family dwelling units that are less than 800 feet from the proposed cell tower. She showed another map as County Exhibit B.

When Darren Eslinger asked if the Arnold property met the 9-1-1 coverage requirements for Cingular Wireless, Ms. Greiner said the Cingular Wireless representatives could probably answer that question.

Carl Ludecke was informed by Ms. Greiner that this property would require a rezoning to CFD for a cell tower to be placed on this site. Both this property and the Arnold property will require a rezoning to CFD. The rezoning will include public hearings before the Zoning Board and the Board of County Commissioners (BCC).

Kevin McBride, Assistant County Attorney, came into the meeting.

Rosel Pine, attorney with Edwards Cohen, was present to represent the case in Karl Sanders' absence. She confirmed that they have achieved the unity of title for the Lake Grove Utilities sites. With this unity of title, the only variance needed for this cell tower is from the 800-foot requirement from a residential area. As requested, they did perform a search in their search ring area. At the previous public hearing, this Board had requested information on other towers in the area. She said there is a tower for Voicestream near the corner of South and North Boggy Marsh Road. That tower is .9 mile outside of their search ring. She submitted a map (Applicant Exhibit A) and pointed out the location of the Voicestream tower, which is about 1.3 miles from the subject site.

Bob Chopra, statacquisition representative, said the search ring itself is .4 mile in radius with the center being where their current site is located.

Ms. Pine said there are no other suitable parcels for development of this cell tower within their search ring that would not require a variance. The only response they received was from Mr. Arnold. That location would be at the end of where South Boggy Marsh Road terminates at a cattle gate. From then on, the rest of the site is inside his property and is not accessible. Mr. Arnold wants them to locate the tower very close to his property line. In order for the tower to be located within his property, they would need variances from the geographical center requirement and the distance from the edge of the property. The subject site is already zoned CFD. They have received a staff recommendation of approval for rezoning from CFD to CFD for the cell tower. The recommendation of approval is subject to this variance being granted. The Arnold site is economically unfeasible for them because the economic terms that have been presented to them far exceed what Cingular is able to accept as far as having an economically viable tower.

Ms. Greiner submitted the aerial from the staff report as County Exhibit C and pointed out to Ruth Gray the parcel now that it has been joined by a unity of title. Even with the two parcels joined, the tower as proposed is not centered. They will have to move it back or request a variance to the centering.

CASE NO.: BOA#77-05-2 AGENDA NO.: 3

OWNER: Lake Grove Utilities, Inc. PAGE NO.: 2  
APPLICANT: Karl Sanders, Esquire

In response to Mr. Ludecke, Ms. Greiner said one lot is 614 feet wide (north to south) and the other lot is 660 feet wide. Mr. Ludecke was informed by Ms. Greiner that the cell tower would be 200 feet high. She reiterated that the tower must be 800 feet from the nearest residence.

Darren Eslinger stated that 1-1/2 miles south of this site is a 200-foot tower with houses practically beneath it. It is about 200 feet from US 27 so the setbacks have not been met at all in regard to that tower. He pointed out that the tower was built before the residences. This case is completely different as far as order of construction.

Ms. Pine submitted a map as Applicant B.

As far as centering, Ms. Greiner said staff would not be using the tax parcels. They would be using the parcel as it is recognized on the zoning map. In response to Henry Wolsmann, Ms. Greiner said there is no distance requirement from the water tanks.

Lawrence Nowakowski, a resident of Westin Hills, said this is the highest point in about eight miles. There is much wildlife in the area. He was concerned about the tower falling and its effect on the area. There is a lot of wind up on the hill. This subdivision is only one-half mile from the Green Swamp Area of Critical State Concern. He felt there is a better use for this property such as bicycle trails or something of that nature. There are also natural gas lines in the area.

Ms. Greiner submitted a map used at the last public hearing (County Exhibit D) that showed where the tower would be located.

Ms. Pine stated that the two lots fronting on the highway are for sale and not part of the lots that were unified. She added that the reason why they need a tower at this site is basically to provide coverage to this area as it is a very fast-growing area. Ms. Gray was informed by Ms. Pine that Mr. Arnold's property is on the other side of the Green Swamp. Mr. Eslinger said this whole area is in the Green Swamp including Mr. Arnold's property. Ms. Pine said this would be a very good site for a cell tower since, as Mr. Nowakowski stated, it is the highest point around. The proposed tower would be a single monopole tower.

In addition to this tower providing coverage for the area, Mr. Eslinger said that at the previous public hearing it was noted that the tower would also provide the 9-1-1 service that is mandated by the Federal Communication Council (FCC).

Charles Michini, design engineer for Cingular Wireless, spoke of a four-mile hole in their coverage. If they allow that hole to remain, emergency personnel will have marginal to no service in this particular area. He submitted three maps showing the existing and proposed coverage as Applicant Exhibit C. He said that if they used the Arnold site, it would provide marginal coverage to the southern part of that particular coverage area and still leave a hole.

Mr. Nowakowski said he paid extra money to be able to live along the back lots as it is a conservation area. Ms. Pine said the tower would be at least 1500 feet from that sensitive wetlands area. The tower will not be impacting any wetland area.

**MOTION by Carl Ludecke, SECONDED by Henry Wolsmann to approve the variance request in BOA#77-05-2 with the conditions that the tower must be a minimum of 600 feet from any outside property lines to the north and south and the tower must be centered on the property east and west.**

Mr. Eslinger asked if there would be any advantage to moving it to the west edge of the property. Ms. Greiner said it would place the tower further from some of the houses.

**CASE NO.:** BOA#77-05-2 **AGENDA NO.:** 3

**OWNER:** Lake Grove Utilities, Inc. **PAGE NO.:** 3  
**APPLICANT:** Karl Sanders, Esquire

Melanie Marsh, Deputy County Attorney, confirmed with Ms. Greiner that the variance from the centering requirement had been advertised.

Ms. Pine explained that the site in question is a leased site, 70 feet by 80 feet, so she can't speak for Lake Groves Utilities. There is already a water plant on the site. The center of the property may be in the middle of a water tank. Mr. Wolsmann was informed that there would be a utility easement to serves as access to the site. When Mr. Ludecke said they could negotiate the lease, Ms. Pine said they could try. Ms. Eslinger commented that this property is mostly level. Ms. Pine said she did not know if the owner would be willing to change the location of the tower as requested in the motion.

Mr. Wolsmann was informed that Lake Grove Utilities owns the entire parcel.

Donald Schreiner said that at the previous public hearing, he recalls discussion about additional utilities being built.

Ms. Greiner said it would appear that placing the tower in the area Mr. Eslinger had suggested would put it more out of the way. However, that would not be in the center of the property and would require a variance. That variance request has been advertised.

Mr. Ludecke said he did not see any problem with the tower being centered east and west on the property. When Mary Link Bennett said there would be a problem with the leased site, Mr. Ludecke said the applicant would need to renegotiate that with the owner. If they have to renegotiate, Ms. Bennett felt it would be more advantageous to move it further west because the subdivision on the south side does not have as many residences.

**FOR:** Fox, Eslinger, Wolsmann, Schreiner, Ludecke

**AGAINST:** Gray, Bennett

**MOTION CARRIED:** 5-2

CASE NO.: BOA#102-05-5

AGENDA NO.: 4

**OWNERS:** Kenneth D. and Kandice A. Dembeck  
**APPLICANT:** Nextel Communications

Anita Greiner, Senior Planner, presented the case and staff recommendation of denial. She noted the aerial and pictures included in the staff report. She added that the tower could be placed in the center of this property and meet all of the Land Development Regulations (LDRs), which is what staff is recommending. Staff is recommending denial of this tower to be placed in the requested location on this property. With nothing being in the center of the parcel, there would be no reason for it not to be placed in the center. She noted that 12 letters of opposition had been received as well as five letters of support. She submitted a map showing the properties owned by the letter writers as County Exhibit A.

Henry Wolsmann was informed by Ms. Greiner that the Dembecks own the entire ten-acre parcel.

Ms. Greiner showed the map from the staff report on the monitor.

Michael Compo was present to represent Nextel Communications. If aesthetics is the question, he felt their proposal is the solution. He submitted eight pictures as Applicant Exhibit A. He pointed out a residence that would have an unobstructed view of the tower if the tower was placed in the center of the property as well as the view from the proposed location of the tower. Mr. Compos said he had Radio Frequency (RF) data to support their position that this is a desperately needed site. He submitted a map (Applicant Exhibit B) showing the existing coverage and a second map (Applicant Exhibit C) showing the coverage if the proposed tower is approved. Mr. Compos said this proposed tower would meet all the setback requirements. He felt that placing the tower to the side of the property would make it more aesthetically pleasing for the surrounding properties than placing it in the center. The hardship is that the owners want to develop the land by building a house for their son in the future. If the tower is placed in the center of the property, an easement would be needed, which would preclude any development in that area. An easement exists for the tower if it is at the side of the property.

Carl Ludecke was informed by Ms. Greiner that if a tower already exists and a person chooses to build a house closer than 400 feet from the tower, that would be their prerogative.

In response to Donald Schreiner, Ms. Greiner said that if the tower was centered on this property, no variance would be needed; but the property would require a rezoning to CFD to allow a cell tower. There would still be ample space on the property to split the property, build a house for their son, and meet the setback requirements.

Because of the slope and view of the property, Mr. Compos said the center of the property would be ideal for the development of real estate for Mr. Dembeck. Mr. Schreiner added that this Board cannot take future development into consideration. Its only responsibility at this public hearing is the item before it.

Mr. Compos said this is an essential site for Nextel as far as coverage.

Melanie Marsh, Deputy County Attorney, stated that pursuant to the Federal Communications Act, no state or local government may regulate placement, construction or modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions. The Board cannot consider that in its decision.

Charles Osborne, a Nextel Sprint employee for 26 years, said he has been to meetings three times for this property. This has been an established neighborhood for years. The Dembecks were the last ones to buy property, and he did not feel the owners were taking their neighbors into consideration. The Dembecks planned to lease this property to Nextel before they ever bought this property. Mr. Osborne did not think this was right. He asked that health issues due to radiation be taken into consideration. Mr. Ludecke commented that Ms. Marsh had already addressed the radiation issue. Mr. Osborne said he would not have bought his property if the tower had been in the area. He felt this tower would devalue his property. At the

**CASE NO.:** BOA#102-05-5**AGENDA NO.:** 4**OWNERS:** Kenneth D. and Kandice A. Dembeck  
**APPLICANT:** Nextel Communications**PAGE NO.:** 2

request of Ruth Gray, Ms. Greiner pointed out the location of Mr. Osborne's property on the map submitted as County Exhibit A. He said there are other areas where the tower could be placed so it would not be close to homes.

Ms. Gray stated that she attended the Lake County Zoning Board public hearing last week on another matter, and these same people were there. It is true that they have come back many times. At that public hearing, the County Attorney gave the legal opinion that this case must come before the Board of Adjustment before the zoning change. Those in opposition were not aware that the case could not be heard that day.

Martin Dzuro said the southeast corner of his property is Mr. Dembeck's northwest corner. He will be able to see the tower from his house if this variance is approved. He read portions of the letter of opposition that he had sent to the County. He did not feel that the hardship presented by the applicant is really a hardship. The future development Mr. Dembeck has planned will not be permitted in the CFD zoning that will be requested after this variance hearing. County staff did not feel there is a hardship and has recommended denial of this variance. He did not understand why the variance was being heard before the rezoning. He felt the rezoning case should be heard first. He also did not feel this variance request "complies with zoning state laws... or fits in any of your County regulations." It was his opinion that the owners do not want the tower in the middle of the property because it will be closer to their house.

Ms. Greiner explained that obtaining a variance before the rezoning is the process used by Lake County so a property is not rezoned to something for which it cannot be used. The entire property would not be rezoned. The owners would rezone the lease area only.

Beth Osborne said many of the houses in the area can see everything that is on the subject ten acres. No matter where the tower is located on the property, she will be able to see it. She said there are children and animals in this area that would be affected by this tower. She said she and her husband have lived in this area for 18 years. The Dembecks have lived there three to five years.

Karen Wade submitted pictures of similar cell towers as Opposition Exhibit A. She pointed out the location of her properties, noting that she can see the subject property from both sides. Her property is the most affected by the site of the tower. Anywhere they placed the cell tower on the subject property would reduce the curb appeal of her property. She works in real estate, and she knew it would reduce her property values greatly. It will decrease the property value of any property that has a view of the subject parcel. The previous owner was denied mining use of the subject property. That rezoning request was for the entire parcel. She asked this Board to deny this variance request.

Doug Wade, a licensed surveyor in Lake County as well as Karen Wade's husband, spoke of the 60-foot by 40-foot barn on their property. It contains many valuable articles. He felt it should be considered just as important as a residential structure. The barn is 285 feet from the proposed site. This is a very nice area, and the residents have invested a considerable amount of money into their homes. This is not a place for a cell tower. The Dembecks purchased their property in 2002. By the time the house was constructed, they have actually only lived in this neighborhood for two years. Mr. Wade spoke of another neighbor who could not be at this public hearing. Mr. Dembeck had just recently offered to sell that neighbor five acres of his property. He will provide an affidavit of that statement for the rezoning case. If this variance is approved, he asked that the tower be centered and meet the 400-foot distance requirement. He asked what would stop Mr. Dembeck from splitting off one acre in that southwest corner for his son, selling the remaining off the other nine acres and leaving the neighborhood with the cell tower. He asked them to consider that when making a decision and deny the application. He questioned whether the Dembecks will pursue this tower in the center of the property if this variance is not granted. In response to Ms. Gray, Mr. Wade said they have a five-acre parcel and a ten-acre parcel.

<b>CASE NO.:</b>	<b>BOA#102-05-5</b>	<b>AGENDA NO.:</b>	<b>4</b>
<b>OWNERS:</b>	<b>Kenneth D. and Kandice A. Dembeck</b>	<b>PAGE NO.:</b>	<b>3</b>
<b>APPLICANT:</b>	<b>Nextel Communications</b>		

Paul Bjelke, who lives southeast of the site, said he can see this property from his home. He has lived in this area since 1984. He asked the Board to deny this application.

John Love, co-owner and co-developer of Love's Landing, which is an aviation community about a mile from the proposed site, said that in 1982, the airport was licensed through the State and rezoned by the County. In 1992, he and his brother decided to develop an aviation community. They have sold about 80 lots. They have about 40 hangar homes and about 60 planes flying out of the airport. At build out, there will be about 150 hangar home sites. The proposed tower is located directly south of their longest runway, about a mile from their front gate on Marion County Road. He did not feel a tall tower is compatible with the existing uses in the neighborhood. He felt it was a bad idea to waive setback rules that are intended for safety besides creating a nuisance for neighbors by moving it closer than it otherwise would be. Mr. Love said the site plan shows ten trees, six of which are to be removed. He felt that should be considered. His main concern was that the tower would be increased in height in the future, which could cause a problem for pilots. If this variance is granted, he asked that the ordinance include language that would restrict the tower to 100 feet so the height cannot be increased without another public hearing. He would also like confirmation from Nextel that it will accept that permanent height restriction on the tower site.

Richard Lancaster wrote his name on the map submitted as County Exhibit A indicating the location of his property. From the back door of his house, he has a clear view of Mr. Dembeck's property. He spoke of vacant land within one-half mile that would be more suited for this use. Many of the lots are for sale. If this tower is approved, he did not feel they would be able to sell their properties for what Lake County has appraised them for. Directly north of his home is the approach for Love's Landing. The airport is an already approved use. A cell tower should not be anywhere near the approach to an airport.

Ms. Gray asked for a show of hands of those in opposition.

Mr. Compo said that although he empathizes with the audience's opinions, he felt the focus has been taken off the real issue, the variance. Nextel is willing to work with the adjacent property owners to come to an aesthetic compromise.

Ken Dembeck said he had no thought of putting a tower on this property when he bought it. It was bought to build a house for his family. Then last year Nextel approached him. They told him that the high spot on his property, which is the highest spot in the area, would be ideal for a tower. When they said the County requires that the tower be in the center of the property, Mr. Dembeck told them that he would never do that. He would be the person who would have to look at the tower the most. The tower would be outside his side door, 1400 feet from the road. The closest structure would be the barn. As far as the airport, if a plane is flying closer than 100 feet from the ground, there is a problem.

Mr. Wade said it was his understanding that without this variance, they are not going to proceed with the rezoning. The neighbors were told at the Zoning Board meeting that the zoning and variance are directly tied together. Ms. Greiner reiterated that the tower can be placed in the center, and no variance would be required. However, if they want to place the tower in another location on the property, a variance would be needed prior to the rezoning.

Mr. Compos stated that there are no other viable alternatives within the search ring.

**MOTION by Darren Eslinger, SECONDED by Ruth Gray to deny the variance request in BOA#102-05-5.**

Ms. Marsh stated that the Federal Communications Act requires that if the Board denies this request, its decision must be put in writing. Therefore, she asked the Board members to put their reasons for denial on



**CASE NO.: BOA#102-05-5****AGENDA NO.: 4****OWNERS: Kenneth D. and Kandice A. Dembeck****PAGE NO.: 4****APPLICANT: Nextel Communications**

the record so the County can prepare the order.

Mr. Eslinger said he made the motion because he did not think a variance is needed. If the owners and applicant want a tower on this property, they should abide by the rules of the County and put in it in the center of the property. Ms. Gray did not feel there is any proof of hardship.

**FOR: Fox, Eslinger, Wolsmann, Gray, Bennett, Schreiner, Ludecke****AGAINST: None****MOTION CARRIED: 7-0**

CASE NO.:

BOA#110-05-5

AGENDA NO.:

11

OWNERS/APPLICANTS:

Bert and Barbara Bozeman

Anita Greiner, Senior Planner, presented the case and staff recommendation of denial. She showed the aerial, site plan, and pictures from the staff report on the monitor. She noted that the storage building was placed 4.7 feet from the side property line instead of five feet. She pointed out an area on the parcel where the storage building would fit, meet all the setbacks, and be on the side rather than the front of the mobile home.

In response to Carl Ludecke, Ms. Greiner said either the homeowner or a licensed contractor who is erecting the shed could obtain the permit. When Mr. Ludecke said most people installing sheds are not licensed contractors, Ms. Greiner said the homeowner has the right to obtain the permit as an owner/builder; but they would be accepting any responsibility. When Mr. Ludecke asked how long the sheds had been on the property, Ms. Greiner said the old sheds have been there for such a long time that Code Enforcement would not take any action against them. The shed in question was recently placed on the property. Ms. Greiner informed Mr. Ludecke that a surveyor discovered that the shed was less than five feet from the side property line.

Ms. Greiner showed two pictures from the applicant and submitted them as Applicant Exhibits A and B.

Mr. Ludecke commented that the site plan shows the older sheds being 4.75 feet from the property line, but there is no measurement for two of the sheds. Ms. Greiner said they were put in line with the older sheds.

In response to Ruth Gray, Ms. Greiner said this lot is part of Holiday Haven Campsites.

Barbara Bozeman was present to represent the case. She submitted a letter from Karen Hines as Applicant Exhibit C. Ms. Greiner read the letter into the record and showed it on the monitor. Ms. Bozeman agreed that they should have checked on permits, but the man who put up this shed also put up all the other sheds on the property. He said he would take care of everything. Before they began this project, they talked to the neighbor on the south side. He did not seem to have any objections. Karen Hines contacted her this past weekend, inquiring where the storage shed would be moved to if this variance is not approved. If it abuts the Hines' property, it will block their view. There are only three residences on the cul-de-sac. Where the storage building is located now does not block anyone's view. In response to Ms. Gray, Ms. Bozeman said the shed in question was installed in March or April of 2005. The other sheds were installed before they bought the property.

At the request of Darren Eslinger, Ms. Greiner pointed out the location of the new shed on the aerial.

There was no one in the audience who wished to speak on this case.

**MOTION by Ruth Gray, SECONDED by Henry Wolsmann to approve the variance request in BOA#110-05-5.**

FOR:

Fox, Eslinger, Wolsmann, Gray, Schreiner

AGAINST:

Bennett, Ludecke

MOTION CARRIED: 5-2

CASE NO.:

BOA#112-05-3

AGENDA NO.:

13

OWNERS/APPLICANTS:

Larry D. and Katherine Nicholson

Anita Greiner, Senior Planner, presented the case and staff recommendation of approval with conditions. She showed the aerial from the staff report on the monitor. She submitted a site plan as County Exhibit A and an engineering site plan from Kenneth Stewart as County Exhibit B. The engineering plan shows what they plan to do to capture the first half-inch of storm water runoff so that it won't go into the wetland area. Currently they are closer than 50 feet to the jurisdictional wetland line, but they don't have an area to pretreat the storm water runoff before it gets to wetland area. This variance request gives the County an opportunity to condition the variance and require swales to capture the first half-inch of storm water runoff. Donald Schreiner confirmed that the granting of this variance would actually result in an improvement in capturing the storm water runoff. Ms. Greiner submitted a detail of the swale as County Exhibit C.

When Henry Wolsmann asked the distance between the screened pool and the seawall, Ms. Greiner said it would be about nine feet. The boat dock will be very close to the property line, but it will meet the minimum requirement of five feet. The owners will be required to obtain approval from the Florida Department of Environmental Protection (FDEP) to allow the "cut in." The owners understand that if a variance is granted but FDEP does not allow it, they cannot construct a boat dock. One of the conditions of approval would be that approval be received from FDEP and submitted to the County.

Larry Nicholson was present to represent the case. He stated that the gentle slope of the land is away from the canal. The seawall stands several inches above the ground level. The proposed boat dock will be on the highest part of the lot so the water would naturally run off of this area. With the swale, there will be no danger of pollution. In response to Mr. Wolsmann, Mr. Nicholson said the lots generally slope toward the lake, which is north. The canal is west of his lot so the water flows either parallel to the canal or away from the canal in the area where he lives. Of the first eleven houses on the canal from the lake, eight of them already have boat docks. All but one of the boat docks were put in when the community was built, and they were "cut in."

Ms. Greiner submitted a map as County Exhibit D, noting this request is not something new in this area. Mr. Nicholson explained that there would be another boat dock within ten feet of the proposed boat dock. His boathouse would not obstruct anyone's view. He has had several positive comments about this request from his neighbors.

Ms. Greiner added that one letter of support had been received.

**MOTION by Ruth Gray, SECONDED by Mary Link Bennett to approve the variance request in BOA#112-05-3 with the following conditions:**

**The storm water plan must be constructed as indicated on the plans that were submitted and must be inspected by the Lake County Customer Services Division prior to a final inspection of the boathouse by the Lake County Building Division.**

**The owners and subsequent owner(s) shall be required to maintain the storm water plan as approved.**

FOR:

Fox, Eslinger, Gray, Bennett, Schreiner, Ludecke

AGAINST:

Wolsmann

MOTION CARRIED: 6-1

CASE NO.:

BOA#116-05-3

AGENDA NO.:

17

OWNER:

Dog, LLC

APPLICANT:

LeeDawn Carpenter

Anita Greiner, Senior Planner, stated that this case was on the consent agenda, and she asked that it be taken off the consent agenda. She did that because the applicant wanted to talk to this Board about the condition staff had recommended. She showed the aerial from the staff report on the monitor. She explained that Elwood Terrace is a paved, publicly dedicated easement. The applicant wants to split the property into three parcels. Two of the parcels would be five acres each, and one parcel would be twenty acres. The two five-acre parcels would be in front, and the 20-acre parcel would be in the back. The requested variance would meet the requirements of the future land use and the zoning. The only lot in question would be the middle five-acre lot as the other two lots meet the requirements. She noted the condition regarding no further splits of the three parcels. She submitted a flood map as County Exhibit A.

Sandy Carpenter was present to represent the case. He said he has written deed restrictions of 3,000 square feet minimum house sizes for the two five-acre parcel lots so they would match the surrounding lots. He hopes to retire on the 20-acre parcel. He has considerable road front on all three lots. If a condition is placed on the 20-acre parcel that it cannot be split further, he would not be able to give his children the five-acre lots that he had planned. However, he would not want the two five-acre parcels he is creating to be split any further.

Mr. Ludecke pointed out that Elwood Terrace is a public easement, but it is not paved to County specifications. The easement is not maintained by the County.

Ms. Greiner submitted two maps as County Exhibits B and C.

Darren Eslinger confirmed that ultimately Mr. Carpenter wanted four five-acre parcels and one ten-acre parcel.

In response to Ruth Gray, Ms. Greiner said Mr. Carpenter would be able to do a family lot split in the future for his children on the 20-acre parcel without coming back to this Board if there is no condition prohibiting splits. Mr. Carpenter said he has two children.

Mr. Eslinger suggested changing the condition to prohibit minor lot splits but to allow a family lot split for two lots with a minimum of five acres each. Mr. Carpenter was agreeable to that condition.

**MOTION by Carl Ludecke, SECONDED by Mary Link Bennett to approve the variance request in BOA#116-05-3 with the condition that Parcels A and B could never be subdivided further than a five-acre tract. Parcel C could be split further in the future; but no lot could be less than five acres, and new lots must be split through a family lot split only.**

FOR:

Fox, Eslinger, Wolsmann, Gray, Bennett, Schreiner, Ludecke

AGAINST:

None

MOTION CARRIED: 7-0

**Introduction**

Melanie Marsh, Deputy County Attorney, introduced Kevin McBride, who has been hired as the Assistant County Attorney.

**Adjournment**

There being no further business, the meeting was adjourned at 4:15 p.m.

Respectfully submitted,

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Sherie Ross  
Public Hearing Coordinator

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Donald Schreiner  
Chairman